Filed 3/16/09 In re R.L. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.L. et al., Persons Coming Under the Juvenile Court Law.	B208475 (Los Angeles County Super. Ct. No. CK69603)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JEANNINE E., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Irwin Garfinkle and Sherri Sobel, Juvenile Court Referees. Dismissed in part and affirmed in part.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Jeannine E. (Mother) appeals from three dependency court minute orders. She challenges (1) a finding that reunification services were provided or offered to her; (2) the reasonableness of the court's reunification plan; and (3) the court's failure to formulate a new reunification plan. We conclude that (1) the court's finding regarding reunification services is not appealable; (2) the reasonableness of the reunification plan was the subject of a prior appeal and is res judicata; and (3) no new reunification plan was required after the court sustained new charges against Mother.

FACTS[1]

"In August 2007, the Department of Children and Family Services (DCFS) received information that Mother physically abused her daughter R., born in 1998.[2] The referral disclosed that Mother became upset for no reason and hit R. in the mouth, cutting her lip. Mother also bruised R.'s ribs. During the incident, Mother's younger child J. (born in 2002) called his paternal grandmother (PGM) to say that R. 'was being beaten up by mother.'

"The PGM called the police and asked them to check on the children's welfare. When confronted by investigating police officers and a DCFS social worker, Mother denied any abuse and suggested that R. hurt herself while playing in a swimming pool. During her interview, Mother experienced mood swings, acting calm one moment and the next moment screaming and acting irrationally. . . .

"R. told the police that Mother punched her twice on the mouth with a closed fist after R. asked Mother for something to drink. Mother also struck R. numerous times on the rib cage with an open hand. J. confirmed that he witnessed Mother's attack on R. The officers could see that R. had suffered a cut lip and had bruising on her rib cage. R.,

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1 This is the second appeal in this dependency proceeding. We shall quote relevant facts from our opinion in *In re J.L.*, B204795 (nonpub. opn.) filed December 22, 2008.

[2] Starting in 2003, DCFS received eight prior referrals for the family alleging physical, emotional or sexual abuse, or general neglect. All the referrals were deemed inconclusive or unfounded.

then age eight, told the social worker she would prefer to live with the PGM. She admitted that she initially told the police that she was okay, because she did not know what Mother would do when the police departed. Mother calls R. 'stupid' and pulls the child's hair. R. fears Mother and feels that Mother does not love her. As a result of the apparent abuse, Mother was arrested for cruelty to a child. DCFS detained the children and placed them with the PGM.

". . . .

"A petition was filed on August 21, 2007. It alleged that Mother struck R. on the face and body, and pulled the child's hair, causing unreasonable pain and suffering, endangering her health and safety, and placing J. at risk of harm. It also alleged that Mother and Father [Ryan L.] have an extensive history of altercations that endanger the children. The court found a prima facie case for detaining the children. Mother was in custody and did not attend the hearing.

"In a report for the jurisdictional hearing, DCFS recounted an interview with R., who told the social worker that Mother 'is in jail because she beat me up with her hands. My mother's hand was closed and she punched me on my mouth and my whole body. When she hit me on my lip blood came out and I was crying. I don't know how many times she punched me. I just remember her punching me a lot of times.' The beatings resulted in bruises on R.'s face and ribs. R. is afraid of Mother. J. informed the social worker during his interview that Mother hit R. on the face. J. told Mother to stop hitting R., but 'My mom did not stop hitting [R.] I got scared and called my nana and told her that my mom was hitting my sister.' Father took photographs of R.'s injuries. Mother denied abusing R. R. indicated that 'I don't want to see or live with mother. I'm afraid of her and I don't want to talk to her.' J. said, 'I just want to live with my Nana.'

". . . .

". . . .

"On October 15, 2007, DCFS reported that Mother's competence to stand trial in the criminal case was being questioned. Two evaluations were performed: the first evaluation showed that Mother was competent, and the second found Mother

incompetent. A third mental evaluation was going to be performed on Mother. If Mother was found competent, her trial was scheduled for November 5, 2007.

"A jurisdictional/dispositional hearing was conducted on October 22, 2007. The court sustained allegations that (1) Mother physically abused R. by striking the child in the mouth and ribs; and by pulling her hair and striking her body, causing unreasonable pain and suffering; (2) Father failed to protect R. from the abuse; and (3) Mother's physical abuse of R. places the child's sibling J. at risk of harm. The court declared the children to be dependents of the juvenile court.

"Moving to disposition, the court removed the children from parental custody and placed custody with DCFS. They were placed with the paternal grandparents. The court ordered Mother to participate in a domestic violence batterer's treatment intervention program and a parenting class, to which Mother said, 'No problem.' The court ordered twice weekly monitored visitation for Mother 'when she gets out of custody.' The court observed that there is a protective order in place covering the children, pending the criminal trial. The court said, 'So, if Mother wants to do something about this restraining order, she must go back into criminal court and do it.' The court added, 'I cannot do anything about visitation between the mother and the children until there is a change' in the criminal protective order." Mother challenged the court's reunification plan in her prior appeal.

A status review report was submitted in April 2008. DCFS reported that Mother has a criminal record that includes convictions for driving under the influence (2001) and battery (2007). Child cruelty charges were still pending against Mother, who remained incarcerated. While incarcerated, Mother was participating in court-ordered parenting classes. The DCFS caseworker wrote to Mother on four occasions in 2007 and 2008, to inform her of the court's order to participate in individual counseling, parenting and domestic violence programs, and in a batterer's treatment intervention program. However, the caseworker was informed by authorities at Mother's detention facility that individual counseling, domestic violence programs and a batterer's treatment program are not offered to inmates.

Mother's mental health was evaluated by three psychiatrists, who all agreed that Mother is incompetent to stand trial in her criminal case. One of the doctors believed that Mother should be involuntarily medicated because she refuses to accept treatment for her mental illness and is a danger to others. Mother remained subject to a criminal court restraining order, which she was violating by sending letters to the children and telephoning them. The children had adjusted well to the home of their paternal grandparents, where they are loved and cared for.

On April 21, 2008, the court found that the case plan "is necessary and appropriate" and that Mother is in partial compliance with the plan. During the hearing, Mother's counsel informed the court that Mother "has done parenting. They offer parenting, and she's trying to get enrolled in counseling and domestic violence classes." The court found that DCFS had provided reasonable services. Mother did not object to the court's findings. Reunification services were continued for both parents.

On April 24, 2008, DCFS filed a subsequent petition. The petition alleged that Father is a current user of illicit substances, including methamphetamines, and has a criminal history involving substance abuse. It further alleged that Mother has a history of drug and alcohol abuse, that she suffers from mental or emotion problems that include irrational, violent and delusional behaviors, and her condition poses a risk of physical and emotional harm to the children.

In a detention report, DCFS wrote that Mother was mentally incompetent to stand trial for the criminal charges against her. Mother's in-laws told the caseworker that Mother hears voices and sees demons and ghosts. The maternal grandmother stated that Mother was diagnosed with bipolar disorder and was observed acting irrationally (e.g., using masking tape inside the house so that the devil would not get her). The children were exposed to Mother's behavior. In addition, R. saw Father drink alcohol until he "gets dizzy" and smoke a substance from a glass container. The children's therapists reported that both children describe terrible physical abuse at the hands of Mother, including being choked and dropped from a second story window. They are terrified of Mother, and do not want to speak to or have any contact with Mother. The therapists

"strongly recommended that [R.] and [J.] not be involved in visitation or contact with their mother at this time."

On May 5, 2008, the court found a prima facie case for detaining the children based on the allegations in the subsequent petition. The children remained placed with their paternal grandparents.

The allegations in the subsequent petition were tried on May 28, 2008. Father testified that he smoked flavored tobacco in a water pipe; he denied drug usage. The court struck the allegations that Father and Mother used drugs. It sustained an allegation that Mother has mental or emotional problems that include irrational, violent and delusional behaviors; these problems require medication and her condition makes her incapable of caring for her children and presents a danger to others, including R. and J. The court did not make any oral findings on the record regarding reunification services; however, the minute order contains findings that the (existing) case plan is necessary and appropriate, and that "reasonable services have been provided to meet the needs of the minor(s)." Mother appeals from the April 21, May 5 and May 28, 2008, hearings.

DISCUSSION

1. Reunification Plan Finding

Mother attacks a finding made by the court at the April 21, 2008, hearing, that DCFS "has complied with the case plan by providing reasonable services." This finding is not subject to appeal. Appeal may be taken from a judgment under Welfare and Institutions Code section 300 "and any subsequent *order* may be appealed as an *order* after judgment." (Welf. & Inst. Code, § 395, subd. (a)(1), italics added.) A judicial finding that DCFS provided reasonable services must be challenged by way of a petition for writ of mandate: it is not an appealable order, unless the court takes some adverse action based on that finding. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1152-1154.) Here, the court took no adverse action based on its finding that DCFS provided reasonable services. Mother's concern that she might eventually be affected by the court's finding at some unknown time in the future does not amount to a reviewable

adverse action by the court. Accordingly, Mother's appeal from the court's findings at the April 21, 2008, hearing is dismissed for lack of appellate jurisdiction.

2. Reasonableness Of The 2007 Reunification Plan

In her prior appeal, Mother challenged the reasonableness of the reunification plan ordered by the court at the disposition hearing on October 22, 2007. We rejected Mother's challenge to the case plan in *In re J.L.*, *supra*, B204795. (See fn. 1, *ante*.) Mother now renews her objections to the October 22, 2007, case plan in this appeal, although she has never argued in the dependency court that it should be "formulating a better plan." (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) Our resolution of Mother's challenge to the case plan is res judicata. We will not be revisiting the 2007 dispositional order again.

Apart from the unreviewable finality of the October 22, 2007, dispositional order, Mother's objections to it have been overtaken by subsequent events. Mother informs us in a request for judicial notice that she is no longer incarcerated. As a result, she can now avail herself of the programs recommended to her in four letters from DCFS, and may comply with the case plan requirements ordered by the court on October 22, 2007. Nevertheless, she complains that time is running short, due to her lengthy incarceration. No adverse orders have been made against Mother based on her failure or inability to comply with the case plan. The dependency court seems well aware that Mother could only partially comply with the case plan during her incarceration.[3] The court has given no indication that it intends to terminate Mother's reunification services in the near future. Until some adverse order is actually made, there is nothing for us to review.

3. Lack Of A 2008 Reunification Plan

Mother contends that the dependency court erred by failing to formulate a reunification plan on May 28, 2008, after sustaining new allegations against her. The court is not required to order additional reunification services after it sustains allegations

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[3] At the April 21, 2008, hearing, the court noted for the record that "the detention facility in which [Mother]'s housed does not offer the programs that the court ordered."

in a subsequent petition. (*In re Barbara P.* (1994) 30 Cal.App.4th 926, 932-934.) The new charges regarding Mother's mental and emotional health do not cancel out the charges that were previously sustained relating to Mother's physical abuse of R. Therefore, the court's dispositional order of October 22, 2007--which includes counseling and domestic violence requirements--still stands. As we wrote in our opinion in *In re J.L., supra,* B204795, "Certainly, a batterer's program for Mother is crucial, given the sustained allegations that Mother battered her eight-year-old daughter, in the presence of her five-year-old son." (*Id.* at p. 7.)

The dependency court may consider imposing additional case plan requirements on Mother based on professional recommendations regarding appropriate treatment for Mother's mental and emotional issues. At this point, the existing requirements of counseling, a domestic violence program, and a batterer's program are sufficient, and no new reunification plan is required. It is premature for us to say whether the dependency court should impose additional reunification requirements arising from Mother's mental health issues and from the therapists' concerns for the safety and well-being of R. and J., who fear Mother and want no contact with her.

DISPOSITION

The appeal from the dependency court order of April 21, 2008, is dismissed for lack of jurisdiction. The orders of May 5 and May 28, 2008 are affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J. CHAVEZ, J.